



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 18 2018

CERTIFIED MAIL NO: 7015 0640 0001 1121 9639
RETURN RECEIPT REQUESTED

Jeffrey King, President
Cobb Tuning Products, LLC
2311 W. Rundberg Lane, Suite 500
Austin, Texas 78758

Agent for Service of Process:
Jeff Johnson
Registered Agent
2179 Rifleman Dr.
Farmington, Utah 84025

Re: Notice of Violation of the Clean Air Act

Dear Mr. King:

The United States Environmental Protection Agency has investigated and continues to investigate Cobb Tuning Products, LLC ("Cobb") for compliance with the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7401–7671q, and its implementing regulations. As summarized in this Notice of Violation, the EPA has determined that Cobb manufactured and/or sold parts or components for motor vehicles that bypass, defeat, or render inoperative elements of design that were installed by the original equipment manufacturer in order to comply with CAA emission standards, and knew or should have known that these parts or components were for such use or put to such use. Therefore, Cobb has violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This Notice of Violation arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare."¹ Congress' purpose in creating the Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and

¹ CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

accelerate a national research and development program to achieve the prevention and control of air pollution.”²

The EPA’s allegations here concern parts or components for light-duty motor vehicles subject to EPA emission standards.³ The Act requires the EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.⁴ As required by the Act, the emission standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.”⁵ There are specific emission standards for each of these motor vehicles for each pollutant and year of manufacture.⁶

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”⁷ Such parts or components are commonly referred to as “defeat devices.” It is also a violation to cause any of the foregoing acts.⁸

EPA Certification Program

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, “introduced into commerce”) satisfies applicable emission standards, the EPA implements a certification program. Under this program, the EPA issues certificates of conformity (“COCs”), thereby qualifying motor vehicles and engines for introduction into commerce.⁹ To obtain a COC, the vehicle or engine original equipment manufacturer (“OEM”) must submit a COC application to the EPA for each engine family or test group of vehicles which it intends to manufacture for introduction into United States commerce.

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.”¹⁰ For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (“NOx”). Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include exhaust gas recirculation (“EGR”), catalytic converters, tumble generator valves (“TGVs”), and air pumps. Modern vehicles and engines are

² CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

³ See generally 40 C.F.R. Part 86, Subpart A.

⁴ CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

⁵ CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

⁶ See, e.g., light-duty vehicle emission standards at 40 C.F.R. § 86.1811-04.

⁷ CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

⁸ CAA § 203(a), 42 U.S.C. § 7522(a).

⁹ 40 C.F.R. § 86.007-30.

¹⁰ 40 C.F.R. § 86.094-2.

equipped with electronic control modules (“ECMs”). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Manufacturers further employ onboard diagnostics, or “OBD,” which is comprised of systems that monitor components that can affect the emission performance of a motor vehicle, detect problems with the vehicle’s emission-related systems that could cause the vehicle to fail to comply with the CAA’s emission standards, alert drivers to these problems, and store electronically-generated malfunction information.¹¹ If a problem is detected, the OBD system illuminates a warning lamp on the vehicle instrument panel to alert the driver. Oxygen sensors are categorized in EPA’s regulations as a “major” diagnostic monitor tracked by an OBD system, along with monitors for the catalyst/exhaust aftertreatment devices, engine misfire, and evaporative leaks.¹² Given these functions, the OBD is part of a motor vehicle’s emission control system.

Alleged Violations

Based on Cobb’s responses to the EPA’s information request dated August 29, 2017, issued pursuant to Section 208(a) of the CAA (“Information Request”), the EPA has determined that Cobb manufactured, offered for sale, and/or sold, from January 1, 2015, to August 29, 2017, parts and components designed to bypass, defeat, or render inoperative emission control devices or elements of design installed on light-duty motor vehicles. Cobb manufactured and/or sold three main categories of “defeat device” products: exhaust replacement pipes (commonly referred to as “straight pipes”), non-exhaust hardware components, and aftermarket ECM programmers (including hardware commonly referred to as “tuners” and software commonly referred to as “tunes”).

The EPA’s findings regarding Cobb’s manufacture and/or sale of defeat devices from January 1, 2015, to August 29, 2017, are identified in the table below:

Defeat Device Product	Effect on Motor Vehicle and Engine Emission Control Systems and Elements of Design	Quantity
Exhaust Replacement Pipes	Remove or bypass catalytic converters.	24
Non-Exhaust Hardware Components	Remove or bypass TGVs and air pumps.	38
Aftermarket ECM Programmers	Override OBD codes to facilitate removal of catalytic converters and/or EGR systems; and/or alter ECM fuel or ignition timing maps.	55,258
TOTAL		55,320

¹¹ See CAA § 202(m), 42 U.S.C. § 7521(m), requiring EPA to promulgate regulations requiring OBD systems for motor vehicles after 2007. See also 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05, and 86.1806-17.

¹² See 40 C.F.R. §§ 86.1806-01(i) and 86.1806-05(i) (using the more general term “exhaust aftertreatment devices”).

A principal effect of these products is to bypass, defeat, or render inoperative elements of the design that control emissions of regulated air pollutants. The exhaust replacement pipes and non-exhaust hardware components are designed to remove or bypass emission control hardware (including catalytic converters, TGVs, and air pumps), which are elements of design that manufacturers employ to meet emission standards.¹³ Similarly, the aftermarket ECM programmers interfere with OBD systems and enable removal of emission control hardware without illuminating a malfunction indicator lamp ("MIL") or prompting any diagnostic trouble codes ("DTCs"); and/or alter fuel injection maps and other elements of design that can lead to significant emission increases compared to the OEM certified programming.

Cobb knew or should have known that these products were manufactured, offered for sale, or sold to bypass, defeat, or render inoperative elements of design that control emissions of regulated air pollutants, based upon the function of the products, Cobb's advertisements and instructions regarding the products, and Cobb's responses to the EPA's Information Request, as discussed further below.

The exhaust replacement pipes and non-exhaust hardware components manufactured and sold by Cobb are designed to bypass or remove catalytic converters, TGVs, and air pumps, which are all elements of design that manufacturers employ to meet emission standards. Many of these components were accompanied by a statement indicating that the components were for "race-use only" and that an aftermarket ECM programmer with "off-road tuning" was required to use the component.

The aftermarket ECM programmers manufactured and sold by Cobb are referred to as "Accessport" tuners. The Accessport tuners come preloaded with a default set of tunes for all vehicles that it supports, and typically includes multiple stages of tunes (e.g., Stage 0, Stage 1, Stage 2, Stage 3, etc.). The different stages of tunes are designed to accommodate a variety of different vehicle configurations. In addition to the preloaded tunes that come with the Accessport, customers may purchase higher level stage tunes from Cobb or custom tunes from third parties.

The Accessport tuners identified in this notice of violation allow end-users to suppress trouble codes associated with missing emission controls in one or more of the following ways: (1) by using Cobb-supplied tunes, (2) through the use of Cobb-supplied software, and/or (3) by using third-party custom tunes that are compatible with the Accessport tuner. For example, the manual for Cobb's Accessport software states the following: "Checked or un-checked DTCs will cause the corresponding code to be active/inactive in a vehicle's ECU. . . . Unchecking a DTC will cause the corresponding CEL (Check Engine Light) code to stay in a 'Not Ready' state, preventing the CEL from activating in the vehicle." The OBD system, which has the capacity to detect, identify, and record malfunctions, is a device and element of design that motor vehicle manufacturers employ to meet emission standards. Suppressing trouble codes also allows end-users to remove emission controls from their vehicles (e.g., by installing a straight pipe or disabling the EGR system) without illuminating a MIL or prompting any DTCs.

Some of Cobb's Accessport tuners are covered by an Executive Order ("EO") from the California Air Resources Board ("CARB") exempting the product from California's emission control system anti-tampering law, California Vehicle Code § 27156. This notice of violation does not address the tuners covered by CARB EOs D-660-1, D-660-6, or D-660-7.

In addition to interfering with the OBD system and allowing for the removal of catalytic converters and EGR systems (which can substantially increase vehicle emissions), the Accessport tuners are capable of rendering inoperative the OEM's software, which controls elements of design such as fueling strategy,

¹³ TGVs are designed to reduce emissions during cold start and idle operating conditions. Air pumps are designed to pump clean air into the exhaust stream to promote a cleaner and more complete burn before the exhaust gases exit the tailpipe.

and inserting its own software, which alters these elements of design. Making significant adjustments to operational parameters such as fueling strategy can lead to significant emission increases compared to the OEM certified programming.

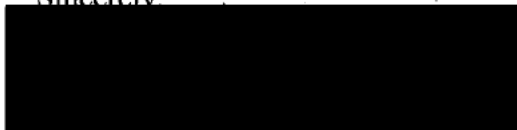
Furthermore, Cobb knew or should have known that these products were manufactured for, offered for sale, or sold for use on "motor vehicles." Many products manufactured or sold by Cobb were designed and marketed for use on specific makes and models of Ford, Nissan, Subaru, Mitsubishi, and BMW light-duty vehicles. Ford, Nissan, Subaru, Mitsubishi, and BMW sought and obtained COCs from the EPA for these motor vehicles and engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines" under the Act.

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.¹⁴ Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation.¹⁵

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Ryan Bickmore, the EPA attorney assigned to this matter, within 14 days of receipt of this Notice of Violation. Mr. Bickmore can be reached at (415) 972-3058 or Bickmore.Ryan@epa.gov.

Sincerely,



Kathleen H. Johnson, Director
Enforcement Division

cc: Mark A. Cameli, Reinhart Boerner Van Deuren, LLP

¹⁴ CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.

¹⁵ See CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4; Memorandum from Susan Parker Bodine, U.S. EPA, Assistant Administrator, to Regional Administrators, *Amendments to the EPA's Civil Monetary Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* (Jan. 11, 2018).

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Office of Small and Disadvantaged Business Utilization (OSDBU)

www.epa.gov/aboutepa/about-office-small-and-disadvantaged-business-utilization-osdbu

EPA's OSDBU advocates and advances business, regulatory, and environmental compliance concerns of small and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman (ASBO)

www.epa.gov/resources-small-businesses/asbestos-small-business-ombudsman or 1-800-368-5888

The EPA ASBO serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

Small Business Environmental Assistance Program

<https://nationalsbeap.org>

This program provides a "one-stop shop" for small businesses and assistance providers seeking information on a wide range of environmental topics and state-specific environmental compliance assistance resources.

EPA's Compliance Assistance Homepage

www.epa.gov/compliance

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

Compliance Assistance Centers

www.complianceassistance.net

EPA sponsored Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Surface Finishing

<http://www.sterc.org>

Paints and Coatings

www.paintcenter.org

Printing

www.pneac.org

Ports

www.portcompliance.org

Transportation

www.tercenter.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

EPA Hotlines and Clearinghouses

www.epa.gov/home/epa-hotlines

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Examples include:

Clean Air Technology Center (CATC) Info-line

www.epa.gov/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP, and Oil Information Center

1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or 1-734-214-4100

National Pesticide Information Center

www.npic.orst.edu or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills -

<http://nrc.uscg.mil> or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) -

www.epa.gov/p2/pollution-prevention-resources#ppic or 1-202-566-0799

Safe Drinking Water Hotline -

www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-hotline or 1-800-426-4791

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<https://www.epa.gov/reg-flex/small-entity-compliance-guides>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

www.epa.gov/resources-small-businesses/epa-regional-office-small-business-liaisons

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

<https://nationalsbeap.org/states/list>

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

www.epa.gov/tribalportal

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/enforcement/small-businesses-and-enforcement

EPA's Audit Policy

www.epa.gov/compliance/epas-audit-policy

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.